

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1237 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MG PAI

Versus

STATE OF GUJARAT

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Appearance:

TANNA ASSOCIATES for Petitioner

MR SP HASURKAR for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of judgment 17/07/2000

ORAL JUDGEMENT

Heard the learned advocates. Rule returnable today. The learned AGP Mr. Hasurkar appears for and waives service on behalf of the respondents.

The petitioner, a retired Government employee, challenges the action of the State Government in proceeding further with the disciplinary action by its order dated 12th January, 2000.

The petitioner, an Electrical Inspector, on reaching the age of 50 years was retired from service in the year 1993 under the provisions of Rule 161 of the Bombay Civil Services Rules. Feeling aggrieved, the petitioner has preferred Special Civil Application No. 700/93 which is pending before this court for hearing and final disposal. It appears that in the year 1985, the petitioner was posted as Electrical Inspector at Surat. On 13th March, 1989, a disciplinary action was initiated against him for retaining an electrical motor belonging to Harish Silk Mills for a long time without getting it tested. The chargesheet issued on 13th March, 1989, was replied to by the petitioner on 10th June, 1991 i.e. well after two years. Before the said inquiry was proceeded further, the petitioner was given premature retirement on 7th June, 1993. After his retirement, on 12th October, 1994, the State Government issued a corrigendum to the aforesaid chargesheet dated 13th March, 1989. Since then, the inquiry was not proceeded further and by the impugned order dated 12th January, 2000, the petitioner has been called upon to attend the inquiry. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Tanna has submitted that the said inquiry can not be proceeded further against the petitioner after severance of relationship of master and servant with the State Government and on account of gross delay. In support of his contention, Mr. Tanna has relied upon the judgments of the Hon'ble Supreme Court in the matters of B.J.SHELAT VS STATE OF GUJARAT & ORS (AIR 1978, SC 1109) and BHAGIRATHI JENA VS BOARD OF DIRECTORS OSFC & ORS (AIR 1999 SC 1841). Mr. Hasurkar has submitted that under the relevant rules governing the service conditions of the petitioner, the State Government is entitled to proceed further with the disciplinary action against the petitioner which was initiated in the year 1989 i.e. long before his retirement. The delay in proceeding further with the inquiry has been explained in the counter-affidavit filed by the Joint Secretary to the State Government. It is stated that after issuance of the corrigendum/revised chargesheet. The petitioner did not submit his reply till the year 1997 and still the said inquiry was pending before the Commissioner of Inquiries. On account of number of pending inquiries, the Government under its Resolution dated 18th November,

1999, decided to appoint retired Government officers as Inquiry Officer and thereafter only the Government could proceed further with the pending inquiries against the delinquent officers, the petitioner being one of them.

I am unable to accept the first contention raised by Mr. Tanna. In the matter of B.J.Shelat (supra), the Hon'ble court held that - " The appointing authority has no jurisdiction to take disciplinary proceedings against a Government servant who had effectively retired ". Be it noted that in the case before the Supreme Court, the delinquent officer was also retired from Government service, in exercise of powers under Rule 161 of the Bombay Civil Services Rules. No other rule empowered the appointing authority to initiate disciplinary action against the retired Government officer. However, since then, the rules governing the service conditions of the Government servants i.e. Bombay Civil Services Rules are amended and the Rule 189-A has been added to the said Rules. In the matter of Bhagirathi Jena (supra) also the Hon'ble Supreme Court expressed a similar view. In paragraphs 5 and 6 of the judgment, the Hon'ble court held that - " It will be noticed from the above regulation that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in a departmental enquiry, nor was any provision made for continuance of departmental enquiry after superannuation. In view of absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the inquiry had lapsed and the appellant was entitled to full retiral benefits on retirement ".

In the present case, it can not be said that the State Government has no authority either to deduct the amount of pension due and payable to the petitioner after his retirement, nor that the Government has no authority to conclude the disciplinary action after the retirement of the petitioner. By Notification dated 29th October, 1971, the Government has added Rule 189-A to the Bombay

Civil Services Rules. The said Rule confers right upon the Government to withhold or withdraw a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including services rendered upon re-employment after retirement. The proviso thereto provides, inter alia, that such departmental proceeding, if instituted while the Government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant be deemed to be a proceeding under the said rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Government servant had continued in service. It is thus evident that not only the Government has been empowered to withhold or withdraw the pension or any part of it due to a delinquent officer, but the State Government is enjoined a duty to continue and conclude a disciplinary action against the delinquent officer even after his retirement if initiated before his retirement. Thus, in my view the State Government is duty bound to proceed further with the disciplinary action against the delinquent officer even after his retirement and to bring it to its legitimate end. In the present case, it is undisputed that the disciplinary action had been initiated against the petitioner while he was in service. In my view, therefore, the Government is wholly justified in proceeding further with the inquiry and to endeavour to bring it to its legitimate end.

However, the question is should the Government be permitted to exercise its power after an unduly long period of 15 years and that too where the chargesheet appears to be quite vague. Mr. Hasurkar has strenuously urged that the delay has been satisfactorily explained and the petitioner should not be permitted to go scot-free in spite of his misconduct of dishonest intention and loss to the State Government.

In my view the explanation coming forth can hardly be said to be satisfactory. It is true that the petitioner did not reply to the chargesheet for more than two years. Even after submission of the reply, the inquiry has not proceeded for 9 years, and in the meantime, the petitioner has retired from service also. Further the dishonest intention and the loss to the State Government are not spelt out either in the chargesheet or

in the corrigendum. In my view the charge framed against the petitioner is too vague to be inquired into and that too after a long delay of 15 years and more than 7 years after the retirement of the petitioner.

In view of the above discussion, the impugned order dated 12th January, 2000 and the decision of the State Government to proceed further with the disciplinary action initiated against the petitioner on 13th March, 1989, are quashed and set aside. Petition is accordingly allowed. Rule is made absolute. The parties shall bear their own costs.

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